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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,030	07/25/2001	Robert Alan Musson	971-129	7035

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EXAMINER	
BACKER, FIRMIN	

ART UNIT	PAPER NUMBER
3621	

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/915,030	MUSSON, ROBERT ALAN	
	Examiner	Art Unit	
	Firmin Backer	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 February 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1/2

Response to Amendment

1. This is in response to an amendment file on February 7th, 2005. In the amendment, claims 1, 2, 8, 11, 12, 16, 18 and 21 have been amended, no claim has been canceled, and no claim has been added. Claims 1-21 remain pending in the letter.

Response to Arguments

2. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beery (U.S. PG Pub No. 2001/0034846 A1) in view of Kenton et al (U.S. Patent No. 5,479,612)

5. As per claims 1, 4, 5, Berry teaches a method of ensuring proper licensing, comprising the executable instructions of receiving a data tile (set or executable instruction, MP3 file) removing at least a portion of the data file thereby prevention a use associated with the data file

wrapping a license authentication set of executable instructions around the data file executing the license authentication set of executable instructions to determine whether the data file is associated with a valid license; and restoring the removed portion of the data file if the valid license exists thereby making the data file available for use (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046)*. Berry fails to teach an inventive concept of an executable instruction exclusively at a computing device. However, Kenton et al teach an inventive concept of an executable instruction exclusively at a computing device (*see abstract column 2 lines 21-41).* Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inventive concept of Berry to include Kenton et al' inventive concept of an executable instruction exclusively at a computing device because this would have enhance the security of the system by providing a system and method of encouraging computer system customers to purchase licenses before employing certain types of peripheral devices for use with their computer system.

6. As per claim 2, 3, Berry teaches a method of preventing the data tile from use if the valid license is not authenticated and notifying an owner if the data file does not have the valid license (*see paragraphs 0021, 0023, 0025, 0038, 0039, 0046)*.

7. As per claim 6, Berry teaches a method of customizing the license authentication set of executable instructions based on a user license (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046)*.

8. As per claim 7, Berry teaches a method for providing the license authentication set of executable instructions to one or more application service providers wherein the license authentication set of executable instructions is customized based on one or more levels of service of the application service providers (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

9. As per claims 8, Berry teaches a method of authenticating a licensed set of executable instructions, comprising the executable instructions of receiving a license set of executable instructions while a computing device housing the license set of executable instructions is in communication with one or more licensing computing devices executing the license set of executable instructions to determine if the license set of executable instructions is associated with a valid license, permitting the license set of executable instructions to further execute on the computing device if the valid license exists, and preventing the license set of executable instructions from further executing on the computing device if the valid license does not exist (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).* Berry fails to teach an inventive concept of an executable instruction exclusively at a computing device. However, Kenton et al teach an inventive concept of an executable instruction exclusively at a computing device (*see abstract column 2 lines 21-41).* Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inventive concept of Berry to include Kenton et al' inventive concept of an executable instruction exclusively at a computing device because this would have enhance the security of the system by providing a system and method of encouraging computer system customers to purchase licenses before employing certain types of peripheral devices for use with their computer system.

10. As per claim 9, Berry teaches a method of executing the license set of executable instructions while the computing device is not in communication with one or more of the licensing computing devices (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

11. As per claim 10, Berry teaches a method wherein the license set of executable instructions is associated with providing a least one of audio, image, and video data (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

12. As per claim 11-15, Berry teaches a method of removing at least a portion of the license set of executable instructions prior to executing the license set of executable instructions and only when the valid license exists and is associated with a dynamic linked library necessary for execution of the license set of executable instructions and is encrypted using public-private key resides within the license set of executable instructions (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

13. As per claim 16 and 17, Berry teaches a method of notifying electronically a licensor of the license set of executable instructions if a fail attempt to execute the license set of executable instructions occurs without the valid license and is made as soon as the computing device is capable of being in communication with the licensing computing devices (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

14. As per claim 18 and 21, Berry teaches a system for validating data tiles comprising a wrapping set of executable instructions operable to be executed prior to using a data file on a computing device, and a validation set of executable instructions called by the wrapping set of executable instructions operable to permit the data file to be useable on the computing device if a valid license to use the data file exists on the computing device (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046)*. Berry fails to teach an inventive concept of an executable instruction exclusively at a computing device. However, Kenton et al teach an inventive concept of an executable instruction exclusively at a computing device (*see abstract column 2 lines 21-41).* Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inventive concept of Berry to include Kenton et al' inventive concept of an executable instruction exclusively at a computing device because this would have enhance the security of the system by providing a system and method of encouraging computer system customers to purchase licenses before employing certain types of peripheral devices for use with their computer system.

15. As per claim 19, Berry teaches a system wherein the data file is an executable set of instructions (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

16. As per claim 20, Berry teaches a system wherein the validation set of executable instructions operates while the computing device is not in communication with any external computing devices (*see paragraphs 0021, 00223, 0025, 0038, 0039, 0046).*

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Firmin Backer whose telephone number is (571) 272-6703. The examiner can normally be reached on Mon-Thu 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Firmin Backer
Primary Examiner
Art Unit 3621

May 4, 2005